IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD F. BURKHART, WILLIAM E. KELLY, RICHARD S. LAVERY, THOMAS R. PRATT, GERALD GREEN, individually and on behalf of all other persons similarly situated, Plaintiffs, v. GENWORTH FINANCIAL, INC., GENWORTH HOLDINGS, INC., GENWORTH NORTH AMERICA CORPORATION, GENWORTH FINANCIAL INTERNATIONAL HOLDINGS, LLC AND GENWORTH LIFE INSURANCE COMPANY, Defendants.	)	CIVIL ACTION NO.______

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Richard F. Burkhart, William E. Kelly, Richard S. Lavery, Thomas R. Pratt, and Gerald Green ("Plaintiffs"), on behalf of themselves and a class of all others similarly situated, bring this action against defendants Genworth Financial, Inc. ("Genworth"), Genworth Holdings, Inc. ("Holdings"), Genworth North America Corporation ("Genworth NA"), Genworth Financial International Holdings, LLC ("GFIH"), and Genworth Life Insurance Company ("GLIC"), and based upon the investigation of Plaintiffs' counsel and upon information and belief allege as follows:

INTRODUCTION

1. This action challenges a deliberate, long-term scheme by defendant Genworth, an insurance holding company, and by its affiliated defendants, to bleed capital from GLIC, a wholly-owned insurance subsidiary of Genworth upon which over a million policyholders depend for long-term care insurance benefits in the event that they become disabled. This conduct has profoundly harmed and will continue to harm GLIC policyholders and the agents through whom such policyholders purchased insurance. Absent injunctive and other equitable relief, defendants' conduct will leave the policyholders at critical risk at the point in their lives when they have greatest need for the benefits provided by the policies.

PARTIES

2. Plaintiff William E. Kelly resides in Connecticut and resided in Connecticut on or about May 2, 2002, when he purchased a long-term care policy from General Electric Capital Assurance Company ("GECAC"). Mr. Kelly's policy remains in force. GLIC is the successor to GECAC and is the current counterparty on Mr. Kelly's policy. Mr. Kelly's policy is identified as Genworth policy number XXXXXX4738.

3. Plaintiff Thomas R. Pratt resides in Massachusetts and resided in Massachusetts on or about July 17, 2003, when he purchased a long-term care policy from GECAC. Mr. Pratt's policy remains in force. GLIC is the successor to GECAC and is the current counterparty on Mr. Pratt's policy. Mr. Pratt's policy is identified as Genworth policy number XXXXXX0033.

4. Plaintiff Richard F. Burkhart resides in Massachusetts and resided in Massachusetts on or about November 16, 2004, when he purchased a long-term care policy from GECAC. Mr. Burkhart's policy remains in force. GLIC is the successor to GECAC and is the current counterparty on Mr. Burkhart's policy. Mr. Burkhart's policy is identified as Genworth policy number XXXXXX9918.

5. Plaintiff Richard S. Lavery resides in Connecticut and resided in Connecticut during the period when he was an agent of GLIC and sold policies, including long-term care insurance policies, on its behalf. Like other agents in the putative class, Plaintiff Lavery is entitled to a payment stream from GLIC continuing long into the future, based on commissions from policies he sold to policyholders.

6. Plaintiff Gerald Green resides in Massachusetts and resided in Massachusetts on or about March 22, 2013, when he purchased a long-term care policy from GLIC. Mr. Green's policy remains in force. Mr. Green's policy is identified as Genworth policy number XXXXXX0533. Mr. Green was also an agent of GLIC and sold long-term care insurance policies on its behalf. Like other agents

in the putative class, Plaintiff Green is entitled to a payment stream from GLIC continuing long into the future, based on commissions from policies he sold to policyholders.

7. Defendant Genworth is a publicly owned insurance holding company organized and existing under the laws of Delaware. Genworth is authorized to do business in the State of Delaware, and regularly conducts business in Delaware.

8. Defendant Holdings is an insurance holding company organized and existing under the laws of Delaware. Holdings is a wholly-owned subsidiary of Genworth.

9. Defendant Genworth NA is an insurance holding company organized and existing under the laws of Washington. Genworth NA is a wholly-owned subsidiary of Holdings, controlled by Genworth. As set forth below, Genworth NA received dividends at issue in this case from GLIC, a Delaware entity the insurance operations of which are regulated under Delaware law.

10. Defendant GFIH is a limited liability company organized under the laws of Delaware. GFIH is a wholly-owned subsidiary of Holdings.

11. Defendant GLIC is a corporation organized and existing under the laws of Delaware. GLIC is a wholly-owned indirect subsidiary of Genworth. It regularly conducts business in Delaware. Both as originator of policies and as successor to General Electric Capital Assurance Company, GLIC has at all relevant times been

the insurer under long-term care insurance policies as alleged below in this Complaint.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341. *See E. M. Fleischmann Lumber Corp. v. Res. Corp. Int'l*, 98 A.2d 506, 509 (Del. Ch. 1953); *see also Medek v. Medek*, 2008 WL 4261017, at *4 (Del. Ch. Sept. 10, 2008).

13. This Court has jurisdiction over defendants Genworth, Holdings, and GLIC under 10 *Del. C.* § 3111, over defendant Genworth NA under 10 *Del. C.* § 3104, and over GFIH under 6 *Del. C.* § 18-105.

NATURE OF THE ACTION

14. Each Plaintiff and member of the Class is a policyholder under a long-term care insurance policy as to which GLIC is the insurer, or a current or former insurance agent through whom policyholders purchased such insurance. GLIC policyholders are contingent creditors of GLIC because they will be due benefits under their policies upon the occurrence of events defined by those policies. GLIC agents are current and contingent creditors of GLIC because of GLIC's ongoing contractual obligation to pay them commissions based on premiums that policyholders to whom the agents sold insurance policies continue to pay.

15. As alleged in greater detail below, in consideration for annual premium payments, the GLIC policies require GLIC to provide long-term support for the costs

of care that may be incurred by the policyholder when he or she becomes eligible under the policy, which occurs when the policyholder becomes unable to perform certain activities of daily living (such as bathing, dressing, walking, or dealing with continence problems).

16. In order to meet these obligations to GLIC policyholders, and the related obligations to pay commissions to agents, GLIC must maintain assets or other forms of capital support for the benefit of its policyholders and other creditors such as agents. However, rather than maintain adequate capital, the defendants have intentionally implemented a series of transactions that have stripped GLIC of assets and of access to capital support from affiliates, without any provision to GLIC of reasonably equivalent value, fair consideration or consideration deemed valuable in law ("Inadequate Consideration"). This series of transactions has left GLIC with insufficient capital to meet its obligations to policyholders and agents, and, given its future obligations, rendered it inadequately capitalized or insolvent. As used in this Complaint, the term "inadequately capitalized" refers to the financial condition of a company, and includes where the company (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

17. Genworth is the owner of several subsidiaries in the mortgage insurance business, both in the United States and abroad, including defendant GFIH. These businesses have been profitable in recent years and are together worth billions of dollars. Defendant GFIH owns Genworth's interests in subsidiaries that conduct its international mortgage insurance businesses. GLIC has no ownership interest in GFIH or its subsidiaries.

18. In a separate subsidiary "silo," Genworth also owns Genworth NA and its direct subsidiary GLIC. *See* simplified organizational chart at figure 3, *infra*. GLIC owns substantially all of the long-term care insurance business issued by any Genworth subsidiary and has experienced increasing financial distress for a number of years. Genworth has admitted publicly that its long-term care business is expected to incur massive losses over the long term, and Genworth's officers and directors view those losses as a serious drag on the overall share value of Genworth.

19. Genworth Life and Annuity Insurance Company ("GLAIC"), a valuable life and annuity insurance company, is a wholly-owned subsidiary of GLIC. GLAIC was primarily in the business of issuing life insurance and annuity policies, but also issued a small number of long-term care policies. Even though GLAIC is now running off its existing business, it is still extremely valuable: GLAIC is carried on GLIC's financial statements at $1.3 billion, and on information and belief is worth between $1.2 and $1.9 billion.

20. Over at least the last six years Genworth has become aware that GLIC will sustain massive losses in the future and will likely become unable to pay its policyholders and agents in full. In response, Genworth has undertaken a scheme to remove assets and capital support from GLIC for the benefit of other Genworth subsidiaries. This scheme has benefitted Genworth's other businesses and Genworth's shareholders, bondholders, and management, to the detriment of GLIC, the Plaintiffs, and the Class.

21. Most recently, Genworth has advanced its scheme through a series of both attempted and completed fraudulent transfers.

22. The completed transfers include payment of substantial dividends from GLIC to Genworth NA, to Holdings and ultimately to Genworth as follows: $190 million in 2012, $190 million in 2013, and $15 million in each of 2014 and 2015 (the "GLIC Dividends"). At the time of these transfers, the financial condition of GLIC was fraudulently concealed. Although at the time the GLIC Dividends were made GLIC reported on its financial statements sufficient assets to make the GLIC Dividends, in fact GLIC was inadequately capitalized or insolvent or was rendered inadequately capitalized or insolvent by the GLIC Dividends. The GLIC Dividends were made for Inadequate Consideration and for the purpose of placing assets beyond the reach of GLIC's policyholders and agents.

23. In addition, in 2016 Genworth cancelled an inter-company reinsurance arrangement (the "Reinsurance Termination") through which Genworth and affiliated entities had previously provided billions of dollars in capital support to GLIC, as alleged in greater detail below. The Reinsurance Termination was also a fraudulent transfer undertaken with the avowed purpose of eliminating the right of GLIC to draw upon the assets of other Genworth subsidiaries in order to satisfy its obligations to its policyholders and agents. The Reinsurance Termination provided Inadequate Consideration to GLIC and was made at a time when GLIC was undercapitalized or insolvent or was rendered inadequately capitalized or insolvent by the Reinsurance Termination.

24. The GLIC Dividends and Reinsurance Termination are sometimes collectively referred to herein as the "Fraudulent Transfers."

25. In light of the Fraudulent Transfers and other wrongful conduct alleged in this Complaint, Plaintiffs seek declaratory, injunctive and other equitable relief under the applicable law governing each conveyance or transfer sought to be unwound.

26. The nature of the contingent claims held by policyholder members of the Class is such that while the maturity date and scope of any particular policyholder's claim is unknowable, the collective claims of the Class will be billions of dollars and are, as an actuarial matter, certain to occur. While the specific

amount is currently unknown, the agent members of the Class are owed and will be owed commissions in the future that will amount to hundreds of millions of dollars. The agent members of the Class are also owed amounts presently and each month in the future. Absent judicial relief, the claims of the Class members will exceed GLIC's ability to pay them.

27. Under these circumstances, the damage the Fraudulent Transfers have caused and will cause can be remedied only by injunctions requiring the unwinding of the Fraudulent Transfers in a manner that will restore to GLIC the capital and capital support that was stripped from it by means of those transfers.

28. Accordingly, in this action, Plaintiffs, on behalf of the Class, seek the following orders or injunctions:

(a) a permanent injunction unwinding and restoring to GLIC the value fraudulently transferred to Genworth NA, Holdings and Genworth by means of the GLIC Dividends; and

(b) a permanent injunction unwinding the Reinsurance Termination, and restoring to GLIC from GFIH, Holdings and Genworth the value lost to GLIC as a result of the Reinsurance Termination.

CLASS ACTION ALLEGATIONS

29. Plaintiffs Burkhart, Kelly, Lavery, Pratt, and Green bring this action as a class action pursuant to Delaware Chancery Court Rules 23(a) and 23(b)(1) and

(2), on behalf of themselves and a class of persons similarly situated (the "Class").

The Class is defined as follows:

> All persons residing in the United States who are either (i) the beneficiaries of long-term care insurance policies that are currently in force and insured by Genworth Life Insurance Company; or (ii) agents in the sale of long-term care and life insurance policies that are currently in force and insured by Genworth Life Insurance Company who are entitled to future commissions from Genworth Life Insurance Company based on the payment by policyholders of future policy premiums.

30. The Class is sufficiently numerous that joinder of all members is impracticable insofar as, upon information and belief, the Class is comprised of over one million policyholders and many thousands of agents. GLIC has records that will specifically identify each member of the Class.

31. There are questions of law and fact common to the Class. These questions include, among others:

a. Determination of the nature, extent, scope, operation and likely effect of defendants' Fraudulent Transfers;

b. Whether Genworth, Holdings, Genworth NA and GLIC caused the GLIC Dividends to be paid with actual intent to hinder, delay or defraud Plaintiffs and the members of the Class;

c. Whether, at the time the GLIC Dividends were paid, Genworth, Holdings, Genworth NA and GLIC knew that GLIC was inadequately capitalized or insolvent or would be rendered inadequately capitalized or insolvent as a result of such payment;

d. Whether the GLIC Dividends were made for Inadequate Consideration;

e. Whether the GLIC Dividends were paid while GLIC was inadequately capitalized or insolvent, or would be rendered inadequately capitalized or insolvent as a result of the payment of the GLIC Dividends;

f. Whether the Reinsurance Termination was engineered, caused, and directed by Genworth, which exercises complete control over the other defendants, and/or by Holdings and GFIH;

g. Whether the Reinsurance Termination was a transfer made to an "insider" of GLIC within the meaning of applicable law because Genworth exercises total control of Holdings, GFIH and GLIC through indirect ownership of their equity and control of the boards of members or directors of each;

h. Whether Genworth, Holdings, GFIH and GLIC entered into the Reinsurance Termination with the actual intent to hinder, delay or defraud creditors of GLIC, including Plaintiffs and the members of the Class;

i. Whether the Reinsurance Termination was for Inadequate Consideration to GLIC;

j. Whether the Reinsurance Termination was made while GLIC was inadequately capitalized or insolvent, or the Reinsurance Termination rendered it inadequately capitalized or insolvent; and

k. Whether the efforts of Genworth, Holdings and GFIH to consummate the proposed GLAIC Unstacking (as defined and discussed below) demonstrated an actual intent to hinder, delay or defraud creditors of GLIC, including Plaintiffs and the members of the Class.

32. The claims of the named Plaintiffs are typical of the claims of the Class, in that they are all negatively affected in the same way as a result of defendants' fraudulent transfers and scheme to remove capital and capital support from GLIC in

order to benefit the other defendants to the detriment of GLIC policyholders and agents.

33. Plaintiffs will fairly and adequately protect the interests of the Class. The interests of Plaintiffs are representative and coincident with, and not antagonistic to, the other members of the Class.

34. Plaintiffs are represented by experienced and able counsel who will fairly and adequately represent the interests of the Class. Plaintiffs' counsel have done extensive work investigating the potential claims in the action and the facts underlying those claims. Plaintiffs' counsel have extensive experience in prosecuting class actions and other complex civil litigation.

35. The prosecution of separate actions by individual members of the Class would create a risk of (i) inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants; and (ii) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

36. In addition to meeting the requirements of Rule 23(a) as set forth in the preceding paragraphs, a class action can be maintained under Rules 23(b)(1) and (2) because defendants have acted or refused to act on grounds generally applicable to

the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole. In particular, Plaintiffs seek equitable relief in the form of (a) unwinding and restoring to GLIC the value of the assets fraudulently transferred to Genworth NA, Holdings and Genworth by means of the GLIC Dividends, and (b) unwinding and restoring to GLIC from GFIH, Holdings and Genworth the value lost by GLIC as a result of the Reinsurance Termination.

37. There are no difficulties likely to be encountered in the management of this case as a class action that would preclude its maintenance as such, and no superior alternative exists whereby the rights of Plaintiffs, Class members, and defendants can fairly be managed.

FACTS

I. Long-Term Care Policies

38. GLIC sells long-term care insurance, an insurance product designed to provide policyholders with the means to pay for nursing and assisted-living costs, and other forms of care when policyholders become unable to perform at least two principal activities of daily living. Policyholders typically buy this insurance when they are younger and healthier, in order to secure a source of funding later in life if their health deteriorates and they can no longer fully care for themselves. The insurance is intended to help them avoid becoming financial burdens to their

families, or exhausting their assets to pay for that care, and thus is a product with a profoundly important role in the financing of care for, and the financial well-being of, older Americans.

39. Long-term care insurance policies cannot be cancelled by the insurer (other than for failure to pay premiums), and thus constitute a promise by the insurer to pay benefits decades—sometimes several decades—after a policyholder has purchased the policy and begun to pay premiums.

40. To fulfill its long-term promises, a long-term care insurer must maintain adequate capital. That capital must be sufficient to pay all claims to be submitted in the future by policyholders and all expenses (including commissions owed to agents) associated with such policies, even if the insurer made mistakes in its projection of the amount of the claims and expenses that it will be required to pay under its policies.

41. Under a long-term care policy, a policyholder typically pays premiums decades before the policyholder makes any claim. This allows the insurance company to use premiums collected from policyholders to build up assets over the lives of the policies so that the insurer will have funds to pay claims when policyholders reach the age where they are likely to make such claims. Figure 1 below illustrates the typical relationship of premiums to claims experienced by a provider of long-term care insurance:

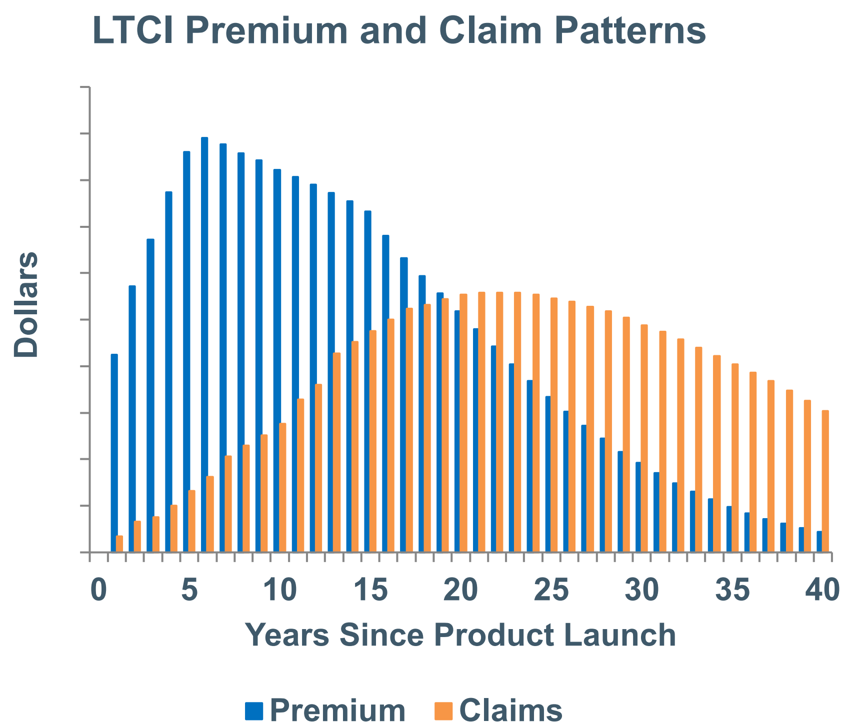

fig. 1

42. The states heavily regulate premiums charged for long-term care insurance. Rates for a particular policy form must be submitted to a state regulator, must meet the requirements of a state's premium regulations, and in some states must be formally approved before any rate may be imposed in a particular state, both when issuing a new policy and when increasing a rate on policies that have already been issued. Permitted rates are based, in part, on actuarially-supported assumptions about the amount of claims that will need to be paid on the policies over their duration.

43. An insurer may attempt to address losses resulting from poor actuarial projections through implementing premium rate increases, where contracts permit

and regulators approve such increases. GLIC's policies permit such rate increases. However, rate increases are not a panacea for improvident earlier claims projections by the insurer and are not a substitute for an adequate capital base. As more specifically alleged below, state insurance regulators will often refuse to allow the full amount of a requested increase, even when actuarially justified. Often those regulators refuse to permit an insurer to use rate increases to avoid the full consequence of its erroneous actuarial assumptions and projections. In such cases, the insurer may be required to continue to sustain losses, which must be absorbed by the insurer's capital and surplus.

44. The need for rate increases generally does not become apparent until an insurer has significant claims experience—that is, until after the insurer has begun to pay a substantial amount of claims, which, for long-term care insurance, may not be until many years after a product's launch (*see* fig. 1, *supra*).

45. Even approved rate increases typically come with a built-in shortfall. Regulators rarely approve increases at rates that exceed what would have been appropriate if charged from the inception of the policy. Thus, any shortfall in premium sustained from the inception of the policy until implementation of the rate increase is generally not recouped through the rate increase itself, and must be addressed in other ways – primarily by reducing capital and surplus.

46. Obtaining regulatory approval for a rate increase sometimes takes years, and in many states, regulators require that insurers phase in significant rate increases over several years. Thus, the insurer often absorbs significant losses while waiting to fully implement an approved rate increase.

47. In short, deficits may result from underpricing and adverse policy experience because:

(i) rate increases may be denied in whole or in part;

(ii) when granted, an increase may not be sufficient to compensate for prior underpricing;

(iii) a long delay between the launch of a product and a request for a rate increase will often occur; and

(iv) implementation of approved rate increases may be delayed.

48. Accordingly, a long-term care insurer must maintain, protect and carefully manage capital and surplus to ensure that it will be able to pay claims and expenses decades in the future, since the amount and duration of those claims and expenses may turn out to be materially greater than anticipated when the policies were issued.

II. Undercapitalization of GLIC

49. As detailed below, on information and belief, when Genworth and GLIC decided to implement the Fraudulent Transfers, they were fully aware that

GLIC was inadequately capitalized or insolvent, or that such transfers would make GLIC inadequately capitalized or insolvent. GLIC's perilous financial condition was the reason why Genworth and GLIC undertook the Fraudulent Transfers that Plaintiffs challenge in this action.

50. At relevant times, through and including the present, GLIC's financial statements have not, and today do not, reflect its true financial condition because of the conventions of the accounting system GLIC uses, and because of GLIC's chronic understatement of its reserves and its chronic overstatement of its prospects for obtaining premium rate increases in the future.

51. GLIC is required to file annual and quarterly financial statements with its domiciliary regulator, the Delaware Department of Insurance (the "Department"). An insurer that provides insurance in more than one state has one state of domicile and is licensed in the others. Each state insurance regulator generally has some level of oversight of that insurer. The primary, if not sole, regulator charged with oversight of the insurer's financial condition is the domiciliary regulator. GLIC's financial statements are required to be prepared in accordance with rules and guidelines established by the National Association of Insurance Commissioners and state insurance departments. The financial statements filed by GLIC since at least 2012 have not accurately depicted GLIC's true level of undercapitalization.

52. "Reserves" are liabilities on a company's balance sheet representing a projection of unpaid current and future obligations that the company anticipates it will have to pay. In the context of an insurance company, a reserve is a projection of claims and expenses that the insurer anticipates it will pay in the future. In order to be solvent, an insurer must maintain assets in excess of its reserves and other liabilities; the amount of that excess is referred to as "capital and surplus."

53. If reserves prove inadequate (that is, if it turns out that a company's projections of its future payments for claims and expenses are too low), a long-term care insurance company must use its "capital and surplus" to meet its obligations to its policyholders and agents. The insurance company's "capital and surplus" is the "cushion" available to absorb the risk of poor projections of future claims experience. If the reserves and the cushion together are inadequate to meet the insurer's obligations to policyholders, the insurer is insolvent. Thus, in order for an insurer to be adequately capitalized, it must maintain capital and surplus sufficient to absorb an increase in its reserves due to worse than predicted claims experience.

54. The principal reserves maintained by long-term care insurers such as GLIC are as follows:

- *Disabled Life/Claim Reserve* ("DLR"): DLR includes the estimated amount that will be required to be paid for claims/losses and expenses for claims that have been incurred—that is, for policyholders that have already met the requirements to qualify for a claim (including actuarial estimates for claims incurred but not yet reported: for example, where a policyholder has met the requirements to qualify for a claim but has not yet filed the claim);

- *Active Life Reserve* ("ALR"): ALR includes the estimated amount that will be required to be paid for expected future claims/losses from policyholders who are "active" – that is, who have not yet filed, or become eligible to file, a claim. Due to the nature of long-term-care insurance, the ALR must project amounts that will be paid years and even decades into the future.

55. On December 31, 2011, before the payment of the GLIC Dividends, in its Annual Statements filed with the Department, GLIC reported $3.1 billion in capital and surplus and $7.2 billion of projected long-term care insurance liabilities carried in its "reserves." On September 30, 2016, in its Quarterly Statement filed with the Department immediately before the Reinsurance Termination, GLIC reported $2.4 billion in capital and surplus and $11.2 billion of projected long-term care insurance liabilities carried in its "reserves." Immediately after the Reinsurance Termination, in its 2016 Annual Statement filed with the Department, GLIC reported $3.2 billion of capital and surplus and $22.7 billion of projected long-term care insurance liabilities carried in its "reserves."

56. Neither these Statements nor GLIC's current reports of capital and surplus and reserves accurately reflected GLIC's true financial condition at the time the reports were made. At all relevant times, GLIC was inadequately capitalized or insolvent.

A. DLR Underreporting

57. During the period of 2012 through 2014, while nearly all of the GLIC Dividends were being paid, GLIC's DLR was radically understated in the financial statements filed with the Department in part because it was based on the premise that the average duration of a claim would be 2.2 years (i.e., after a policyholder made a claim, the policyholder would, on average, continue collecting benefits for 2.2 years). In fact, this was an outdated statistic derived from data from 2010 and earlier, and GLIC was fully aware of this when it filed the statements with the Department. GLIC was reporting a higher number in its SEC filings at the same time. As alleged below, GLIC's more current data showed that the actual average duration of a claim was approximately 3 years, or 36% longer than assumed in the financial statements filed with the Department. Genworth's annual reports filed with the Securities and Exchange Commission ("SEC") for 2010, 2011, 2012 and 2013, as well as other SEC filings, confirm that 3 years was the accurate projection:

- In Genworth's year-end 2010 Form 10-K, filed with the SEC on February 25, 2011, Genworth stated that its "[l]ong-term care insurance claims typically have a duration of approximately two to four years with an average duration of approximately three years."
- In Genworth's year-end 2011 Form 10-K, filed with the SEC on February 27, 2012, Genworth stated that its "[l]ong-term care insurance

claims typically have a duration of approximately two to five years with an average duration of approximately three years."

- In Genworth's Form 8-K, filed with the SEC on June 11, 2012, Genworth stated that its "[l]ong-term care insurance claims typically have a duration of approximately two to five years with an average duration of approximately three years."
- In Genworth's year-end 2012 Form 10-K, filed with the SEC on February 28, 2013, Genworth stated that its "[l]ong-term care insurance claims typically have an average duration of approximately three years."
- In Genworth's Form 8-K, filed with the SEC on May 30, 2013, Genworth stated that its "[l]ong-term care insurance claims typically have a duration of approximately two to five years with an average duration of approximately three years."
- In Genworth's year-end 2013 Form 10-K, filed with the SEC on March 3, 2014, Genworth stated that its "[l]ong-term care insurance claims typically have average duration of approximately three years."

58. Substantial publicly available evidence shows that Genworth knew full well that its DLR was inadequate even before it informed the public of that fact in its SEC filings, and that rather than correct any inaccuracies in the financial

statements filed with the Department, Genworth suppressed and/or ignored the adverse information.

59. On information and belief, in January 2014, Genworth hired James Boyle as the CEO of its U.S. Life Insurance Division (the "Division"), which included the long-term care business of GLIC. Shortly thereafter, Lynne Patterson was hired as the Division's CFO. In May 2014, Patterson began a review and investigation of the underlying actuarial assumptions for long-term care reserves.

60. On information and belief, in early June 2014, following a series of meetings with the actuaries involved in developing the reserves, Patterson discovered that the assumptions the actuaries were using to develop the reserves had been "back-fitted" to meet the demands of senior management and were unreliable. Boyle and Patterson shared their concerns with Genworth's CFO, Martin Klein, on June 16, 2014.

61. On information and belief, on July 16, 2014, Boyle advised Genworth's Board of Directors and Audit Committee:

- that John Nigh, the Division's chief actuary, and Loida Abraham, a supervising actuary, had attempted to manipulate actuarial assumptions to reduce long-term care reserves;
- that Genworth's chief actuary, Robert Vrolyk, on June 26, 2014, had admitted to Boyle that based on independent work Vrolyk had

performed, there may have been an error in Genworth's long-term care reserve calculations of as much as 20%, or approximately $500-600 million;

- that three in-house actuaries overseen by Patterson to prepare a new "clean-slate" estimate of long-term care reserves using actual claims experience had arrived at a reserve that was $800 million higher than previously stated;
- that assumptions underlying the long-term care reserve announced in December 2013 had not been properly peer-reviewed, and that the documentation needed to support the reserve announced in December 2013 was incomplete or missing; and
- that Boyle and Patterson were being isolated and that efforts were being made to slow down a final conclusion regarding the reserve's adequacy and amount. Those efforts included directions to Milliman, an independent actuarial firm that Genworth had retained, to eliminate its validation of the proposed $800 million reserve adjustment.

62. On information and belief, in or around mid-July 2014, Boyle gave a "red alert" warning to Genworth's Board of Directors. Less than two weeks later, on July 28, 2014, Boyle and Patterson resigned, about six months after joining the company. Genworth issued a press release stating that Thomas J. McInerney,

Genworth's CEO, would also assume the duties of CEO of the Division effective immediately.

63. Immediately following the resignation of Boyle and Patterson, on a July 30, 2014 investor conference call, McInerney, who was now CEO of both Genworth and the Division, revealed that Genworth would be conducting a detailed review of its DLR assumptions, methodology and process, and that changes to the assumptions for the DLR could be required as a result.

64. On November 6, 2014, Genworth's management disclosed during an earnings call with investors that the DLR for its long-term care policies had been understated by $589 million in the financial statements filed with the Department, resulting in a reserve restatement in that amount (the "2014 DLR Restatement"). During that call, Klein, Genworth's CFO, stated that approximately half of this overall increase in the DLR was attributable to updating assumptions regarding claim termination rates, including adjusting the average length of claim assumption to reflect Genworth's actual experience between 2010 and 2013, the period during which the GLIC Dividends were paid.

65. In the wake of the November 2014 revelations, Genworth's stock price dropped by 55%, reflecting the significance of GLIC's future liabilities to Genworth's overall financial health.

66. Following the revelations and ensuing stock drop, class actions were filed by Genworth shareholders alleging that Genworth had committed fraud on Genworth investors by massively understating GLIC's reserve. In the consolidated class action, *In re Genworth Financial, Inc. Securities Litigation*, C.A. No. 14-cv-00682-JRS (E.D.Va.), the court denied defendants' motion to dismiss under the heightened pleading standards of the Private Securities Litigation Reform Act, concluding that "Defendants [i.e., Genworth and its high-level executives including McInerney] knew the actual duration of [long-term care] claims [and] that [Genworth], by using…incorrect statistic[s] to calculate reserves, was understating its reserves by material amounts," and there were detailed allegations of fact supporting the claim that the Defendants' representations were "consciously misleading." *In re Genworth Fin. Inc. Sec. Litig.*, 103 F. Supp. 3d 759, 777 (E.D. Va. 2015). Based on the publicly available information upon which the class action plaintiff relied, the court concluded that there were ample factual allegations to support the inference that Genworth and its President, Chief Executive Officer, and Chief Financial Officer knew full well, long before the November 2014 revelations (and during the period in which nearly all of the GLIC Dividends were paid), that GLIC's reserves had been materially understated.

67. The securities class action was ultimately settled with a payment of over $200 million to settling classes of Genworth stockholders. However, no money or

anything else of value was restored to GLIC or otherwise made available to protect GLIC's policyholders and agents.

68. Even after the revelation of the deficiencies in GLIC's DLR, the class action and subsequent settlement, GLIC's DLR continued to be understated, and in 2016, GLIC again increased its DLR by $432 million, or approximately 9% (the "<u>2016 DLR Restatement</u>"). The assumptions underlying this adjustment would have been equally applicable to the reserves determined at the time of each of the GLIC Dividends.

B. <u>ALR Understatement</u>

69. Unlike the DLR, GLIC's reported ALR is not based on actual claims experience. Instead, the rules governing its financial statements permit the ALR to be projected and recorded based on the assumptions that GLIC made about claims and claims expense *at the time the policies were issued*. These assumptions were, and are, obviously and profoundly wrong, given the restatements of DLR that have occurred, and, as described in more detail below, the numerous—and recently massive—rate increases GLIC has sought. In short, in light of GLIC's actual experience, its ALR, as stated in its financial statements, is based on historical, inaccurate assumptions, and did not and does not reflect GLIC's true expected liability to its policyholders. In fact, the actual liability is many billions of dollars

greater than the liability reported in its financial statements filed with the Department.

70. At the time of the 2014 DLR Restatement, GLIC's ALR was approximately four times the size of its DLR. On information and belief, had the 2014 ALR been calculated on an actuarial basis using the updated assumptions underlying the restated DLR, the ALR would have been increased by more than $1.2 billion, which would have left GLIC with a stated capital and surplus of only $2.0 billion. But even this amount would have been an overstatement of the capital and surplus in light of the 2016 DLR Restatement.

71. After the 2016 DLR Restatement, once again, no adjustment was made to the ALR reported on GLIC's financial statements filed with the Department. On information and belief, if the 2016 ALR had been calculated on an actuarial basis using the updated assumptions underlying the restated DLR, the ALR would have been increased by approximately $4.0 billion to $4.5 billion, which would have reduced GLIC's surplus by that same amount, leaving GLIC with a capital *deficit* in the range of approximately negative $0.9 billion to negative $1.4 billion.

72. With estimated claims running into the tens of billions of dollars, a deficit of <u>negative</u> $0.9 billion to <u>negative</u> $1.4 billion constitutes inadequate capital or insolvency. This is the state of affairs at GLIC today, and it was the state of affairs at the time of each of the Fraudulent Transfers.

C. Improper Modeling of Future Cash Flows

73. The accounting rule that permits GLIC to carry its ALR based on historical information (that is now known to be inaccurate) is premised on GLIC being able to pass a so-called "cash flow" test.

74. GLIC is required by operative regulations to submit to the Department (and to regulatory officials in other states where it does business), an analysis by a qualified actuary of its ability to generate sufficient cash flow to meet its obligations. This analysis (referred to in the industry as "Cash-Flow Testing") must demonstrate a "positive margin" by showing that projected cash flows are sufficient to pay claims and expenses as they fall due. In conducting Cash-Flow Testing, the actuary adds (a) assets equal to the insurer's current reserves, (b) projected investment earnings on those assets, and (c) future premiums, and then subtracts (d) future claim costs, and (e) future expenses. To pass the cash flow test, the result, or "margin," must be significantly positive.

75. In each year through 2017, GLIC has reported a positive Cash-Flow Testing margin, but only because it builds into its cash-flow model a significant amount of future premium increases that have not yet been authorized by state regulators. In many cases, GLIC has not yet even requested from regulators the rate increases it has projected in its Cash-Flow Testing.

76. GLIC's projections of expected future rate increases that GLIC used in its Cash-Flow Testing Model shot up dramatically between 2014 and 2017 (while the Reinsurance Termination was being engineered), without any basis to support the assumption that regulators will approve the increases. In its 2014 Cash-Flow Testing, GLIC projected a present value of future rate increases of $4.0 billion. That projection shot up to $5.3 billion by year end 2015, then to $6.5 billion by year end 2016, and then to $8 billion by year end 2017. Despite those huge increases in the projected present value of future rate increases, GLIC's Cash-Flow Testing margins still declined precipitously. For example, the Cash-Flow Testing margin for GLIC's long-term care business deteriorated from $2.4 billion in 2014, to between $2.0 and $2.5 billion in 2015, to $1.5 billion in 2016; and to only $0.6 billion in 2017.[1] That is, even after assuming future massive and unprecedented rate increases, the majority of which GLIC has not even requested and regulators have not approved, GLIC continues to report significantly decreasing Cash-Flow Testing margins.

77. The increasingly dire economic condition reported by Genworth regarding GLIC's economic condition constitutes a recognition of historical liabilities and conditions that were previously under-reported by even greater amounts. Those reports are a recognition that GLIC is, and was at the time of the

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[1] Cash-Flow Testing figures exclude GLIC's long-term care affiliate in New York, which are reported separately by Genworth.

Fraudulent Transfers, undercapitalized or insolvent. GLIC has written very few new policies during the last six years, and the deterioration reflected in its financial reporting therefore reflects a financial situation that existed earlier, at the time of the Fraudulent Transfers.

78. Neither GLIC nor Genworth has any basis to support the projection of dramatic increases in future GLIC rate approvals. On the contrary, the trend of GLIC's rate approvals reveals that during the period in which the projection for such rate increases was increasing, regulators were in fact more frequently declining those requests. In contrast to the years 2007 through 2012, during which most of GLIC's proposed rate increases were approved, GLIC received approval of only 53% of its requested rate increases in 2015, 44% in 2016 and 37% in 2017.

79. Prior to 2013, state regulators generally approved GLIC's requests for rate increases, which typically were small. But beginning in 2013, regulators have increasingly refused to allow GLIC to increase its rates as much as GLIC had requested, as Figure 2 shows below.

GLIC Rate Increase Approvals by Year (National)				
Disposal Year[1]	**Rate Increase Requested[2]**	**Rate Increase Approved[2]**	**Approval Ratio (% Granted)**	**Number of Requests[3]**
2007	10.99%	10.99%	100%	48
2008	10.99%	10.99%	100%	78
2009	10.71%	10.71%	100%	11
2011	19.78%	19.60%	99%	82
2012	27.11%	27.00%	100%	25
2013	54.01%	39.96%	74%	136
2014	40.22%	26.00%	65%	77
2015	37.62%	20.07%	53%	87
2016	62.53%	27.21%	44%	90
2017	69.92%	25.65%	37%	87[4]

[1] Includes approvals and denials.
[2] Weighted average based on estimated premiums by state and policy form.
[3] Rate increase requests summarized by policy form family. Actual requests may have been higher if counted at the individual policy form level.
[4] Excludes approximately 45 pending requests.

fig. 2

80. Among states that constitute GLIC's highest sources of premium, the disparity between requested and approved rate increases has been enormous in recent years. As examples, from 2013 to 2017, GLIC requested from Georgia rate increases averaging more than 50% but received less than 15%. During the same period, in North Carolina, GLIC requested rate increases averaging more than 60% and received approvals for less than 40%. During the same period, in Connecticut,

GLIC requested rate increases averaging nearly 50% and received average approvals of less than half that amount.

81. The assumption that GLIC will actually receive its projected $8.0 billion present value of rate increases is insupportable based on GLIC's recent experience with rate increases.

82. On December 30, 2015, GLIC submitted to the Connecticut Insurance Department a rate increase request of 99% for policies with lifetime benefit periods and 82% for policies with limited benefit periods. GLIC disclosed that the amounts requested were "significantly **less** than the amount GLIC can justify in total" and that, "[c]onsistent with GLIC's 2014 Asset Adequacy Testing, [GLIC] anticipate[d] filing future rate increase requests of similar magnitude." On March 30, 2016, the Connecticut Insurance Department denied the requests in substantial part, allowing rate increases of only 40% in total, phased in over three (3) years. The department "determined that this block of business is performing much worse than expected but noted that the company had not accounted for the impact of past rate increases in this current filing" and stated that "[u]nder Connecticut law, increases of 20 percent or more must be spread out over a minimum of three years to mitigate the impact for policyholders."

83. On February 23, 2017, in scathing terms, the Massachusetts Division of Insurance rejected several long-pending requests by GLIC for approval of rate

increases, observing that “the benefits provided in the policy forms that are the subject of those filings are unreasonable in relation to the premium charged, and the proposed rate increases are unjust, unfair, inequitable, and misleading, or encourage misrepresentation as to such policies.” The division found that the long-term care product had been underpriced in order to gain market share, and that:

> Now, when these responsible [policyholders] are entering a period when a claim is likely and many are at their most financially vulnerable position, they are asked to pay significantly higher premiums to account for the carriers’ mis-pricing. Rather than utilizing its own resources, or those of an affiliated company, to rectify the financial consequence of its past inaccurate actuarial assumptions, Genworth is instead unfairly, inequitably and unreasonably attempting to pass on substantial costs of such past inaccurate actuarial assumptions to current policyholders.

84. As alleged above, Genworth and GLIC’s financial reporting did not and does not reflect GLIC’s true financial condition. In fact, GLIC is inadequately capitalized or insolvent and has been for at least the period during which the Fraudulent Transfers were made. Without its projection of future premium rate increases with a present value of $8 billion, GLIC’s current assets would be insufficient to meet its own estimated obligations to Plaintiffs and the members of the Class. GLIC described its reliance on these massive future rate increases in stark terms in a recent letter to the Montana Insurance Department. After the Montana Insurance Department approved only a small portion of the rate increase requested by GLIC. GLIC responded in part as follows:

> GLIC previously noted to the Department that our 2016 Cash Flow Testing (CFT) results indicate we had $1-1.5 billion of positive margin that is notably dependent on $8 billion of future rate actions. After completing new results from our 2017 CFT, this projected margin has fallen to a range of $0.5-1 billion. Stated differently, **to the extent that CFT projects raising less than $7-7.5 billion from future rate actions, GLIC would be facing insolvency.**

Letter from Jamala M. Arland, Vice President & Actuary, Genworth Life Insurance Company, to Montana Insurance Department (Mar. 12, 2018) (emphasis added).

85. The experience of GLIC's long-term care affiliate in New York shows what would happen if GLIC were not permitted to presume regulatory approval for massive future premium rate increases in its cash flow model. The insurance regulator in New York does not permit rate increases to be included in an insurer's Cash-Flow Testing unless they have been approved by the relevant department of insurance. As a result, GLIC's affiliate in that state failed its Cash-Flow Testing, and the regulator required it to use a portion of its capital and surplus to support the resulting increase to its long-term care reserves. If that rule were applied to GLIC, it would also fail Cash-Flow Testing. In that case, it would have to radically increase its reserves, and it lacks the assets to support such increased reserves.

III. Defendants' Efforts to Move Capital Out of, and Away From, GLIC

86. As alleged above, since at least 2012, Genworth's management has been aware of GLIC's undercapitalization or insolvency. Faced with the likelihood that GLIC's long-term care insurance business will sustain massive losses and be

unable to pay claims in the future, and given the consequences to Genworth of GLIC's financial woes, the defendants orchestrated a scheme to isolate GLIC from Genworth's other profitable business lines and unwind capital support arrangements by which other financially-sound Genworth subsidiaries had previously supported GLIC's obligations to its policyholders and agents. The purpose of this scheme was to shield Genworth and its shareholders from GLIC's substantial future liabilities. This scheme involved engaging in the Fraudulent Transfers challenged in this action, which rendered the newly isolated GLIC even more financially troubled than it already was, to the direct detriment of GLIC policyholders and agents.

87. Specifically, beginning no later than 2012 and continuing to this day, Genworth has been engaged in a program intended to strip capital and financial backing from GLIC and thereby to isolate GLIC so that it could fail without affecting the rest of Genworth's enterprise. Defendants have carried this program in the following ways:

A. <u>The GLIC Dividends</u>

88. As noted, GLIC paid the GLIC Dividends to Genworth NA as follows: $190 million in 2012, $190 million in 2013, and $15 million in each of 2014 and 2015.

89. On information and belief, Holdings and Genworth are subsequent transferees of all or a portion of the GLIC Dividends.

90. GLIC received Inadequate Consideration for paying the GLIC Dividends, each of which GLIC paid at a time when it was, or would be rendered, inadequately capitalized or insolvent.

B. The Reinsurance Termination

91. In 2014, Genworth formally announced a plan to carry out the Reinsurance Termination by unwinding a long-standing series of financial support arrangements pursuant to which valuable Genworth assets had previously been made available as capital support for GLIC (and therefore were available to support payment of future claims by GLIC's policyholders and agents). This effort was completed in 2016.

92. These support arrangements had their roots in 2001, when Genworth established a reinsurance arrangement between General Electric Capital Assurance Co., GLIC's predecessor, and an affiliated reinsurer, Brookfield Life Assurance Co., Ltd. ("Brookfield"). Pursuant to the reinsurance arrangement, Brookfield assumed 50% of the risk associated with GLIC's long-term care business. Brookfield's reinsurance obligations were of substantial value to GLIC because at that time, Brookfield had access, through a variety of Genworth subsidiaries, to Genworth's valuable Canadian and Australian mortgage insurance business, which was worth billions of dollars.

93. The reinsurance arrangements between Brookfield and GLIC were made through a "quota share" agreement, in which a primary insurer (in this case, GLIC) remits to the reinsurer (in this case, Brookfield) a set percentage of premiums it receives from policyholders, and in exchange, the reinsurer commits to pay the same percentage of the cost of claims incurred by the primary insurer. In the case of the Brookfield/GLIC relationship, GLIC agreed to remit 50% of long-term care premiums it received, and in exchange, Brookfield agreed to pay 50% of the costs of claims for GLIC's long-term care line of business.

94. Such "quota share" agreements permit insurance companies such as GLIC to spread risk, and, more importantly, provide a backstop in the event claims experience gets worse. That is, the reinsurance agreement reduced the risk that GLIC would be unable to pay claims asserted by policyholders. The reinsurance agreement was particularly valuable to GLIC because of Brookfield's ability to meet its obligations under the reinsurance agreement by reason of Brookfield's ownership of the Genworth entities that owned its valuable Canadian and Australian mortgage insurance businesses.

95. The original reinsurance arrangement was amended in a variety of ways over the ensuing years but until 2016 it preserved its original economic substance because the value of the Genworth international mortgage insurance businesses continued to provide capital support to GLIC.

96. As of 2014, Brookfield's reinsurance obligations to GLIC had been assumed by Brookfield Life and Annuity Insurance Company Limited ("BLAIC"), another Genworth affiliate. Unlike Brookfield, BLAIC had no direct interest in the valuable Genworth mortgage insurance assets. However, Brookfield guaranteed BLAIC's performance of its reinsurance agreement with GLIC. Therefore, through the combination of (i) the reinsurance agreement between GLIC and BLAIC; (ii) Brookfield's guarantee of BLAIC's performance of that reinsurance agreement; and (iii) Brookfield's ownership of valuable international mortgage insurance assets, the benefits and commissions due and to become due to GLIC policyholders and agents continued, in substance, to be backed by Genworth's valuable international mortgage insurance assets.

97. The chart below depicts the corporate and contractual relationships among GLIC, BLAIC, Brookfield, and related entities prior to December 31, 2015. It shows graphically that Genworth's international mortgage insurance assets were held by Genworth Australia General Partnership and Genworth MI Canada, Inc. as part of a separate "silo" within Genworth's corporate structure (i.e., they were owned ultimately by GFIH, while GLIC was owned by Genworth, NA). Nevertheless, GLIC's obligations to policyholders were backed by those mortgage insurance assets as a result of the reinsurance and guarantee agreements among GLIC, BLAIC, and Brookfield:

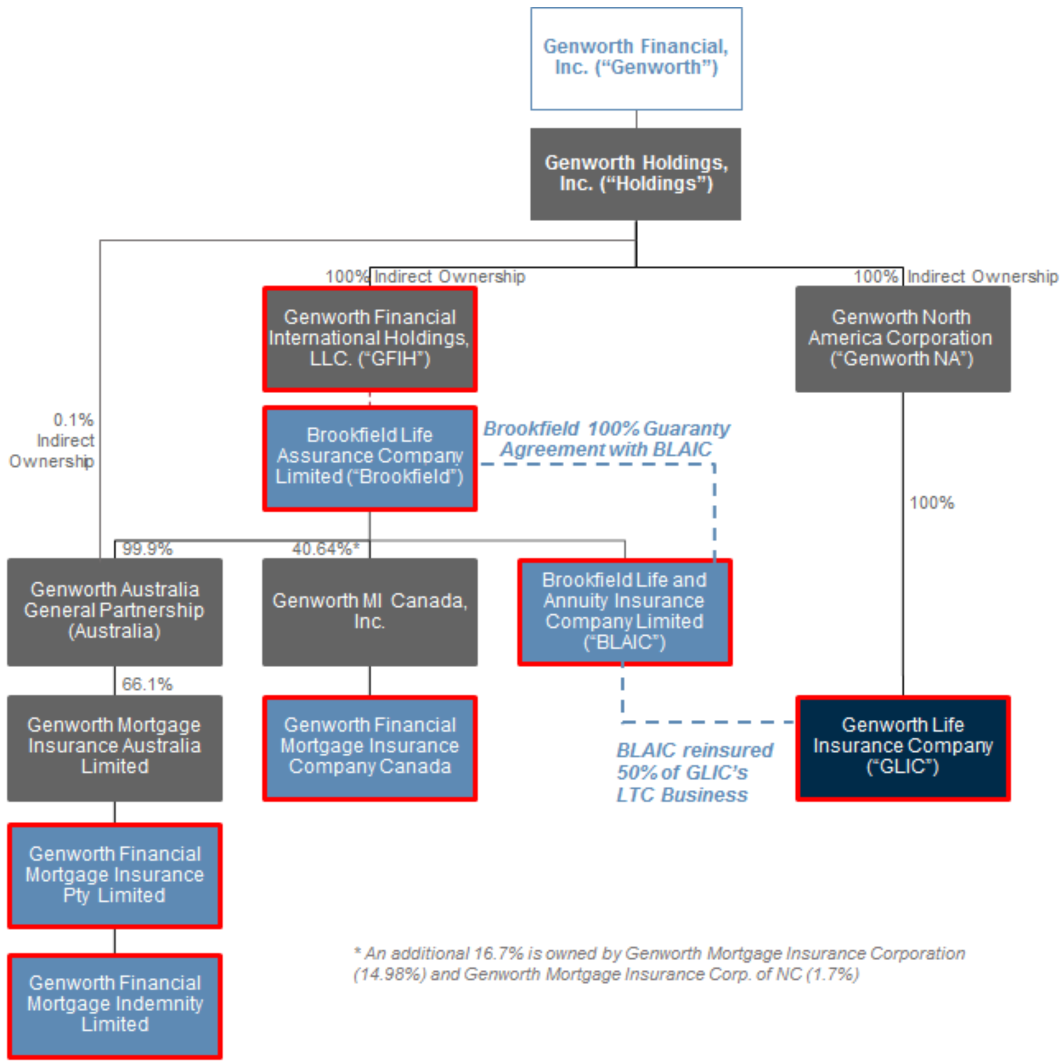

fig. 3

98. On December 31, 2015, Genworth caused, and GLIC permitted, the cancellation of the guaranty agreement between Brookfield and BLAIC. In its stead, defendant GFIH entered into a capital maintenance agreement with BLAIC (the "Capital Maintenance Agreement"), under which GFIH agreed to provide capital to back BLAIC's reinsurance obligations to GLIC. At that time, the Capital Maintenance Agreement continued to backstop GLIC's obligations to policyholders

and agents with the value of the international mortgage insurance business owned by GFIH. That is, although the contractual relationship changed, GLIC's obligations to its policyholders and agents continued to be supported by the valuable mortgage insurance assets held by other Genworth entities.

99. However, in 2016, Genworth completed the unwinding of the support arrangements for GLIC. The structure was once again complex. For Inadequate Consideration to GLIC, Genworth caused, and GLIC assented to, the merger of BLAIC with, and into, GLIC. This merger terminated BLAIC's reinsurance agreement with GLIC. At the same time, and for Inadequate Consideration, the parties terminated the Capital Maintenance Agreement by which GFIH previously had made available the value of Genworth's interest in the international mortgage insurance business to support BLAIC's reinsurance obligations.

100. The combination of these corporate changes—the merger of BLAIC into GLIC, and the termination of the Capital Maintenance Agreements—cut off GLIC from the capital support of Genworth's international mortgage insurance businesses. That is, GLIC's obligations to policyholders and agents were no longer backed by Genworth's valuable international mortgage insurance assets, which left policyholders and agents without any identifiable source of capital if GLIC's capital proved inadequate to pay their claims. The Reinsurance Termination was made for Inadequate Consideration to GLIC. The chart below depicts how these corporate

changes cut off GLIC from assets that could have been used to support GLIC's payment of claims to policyholders and agents:

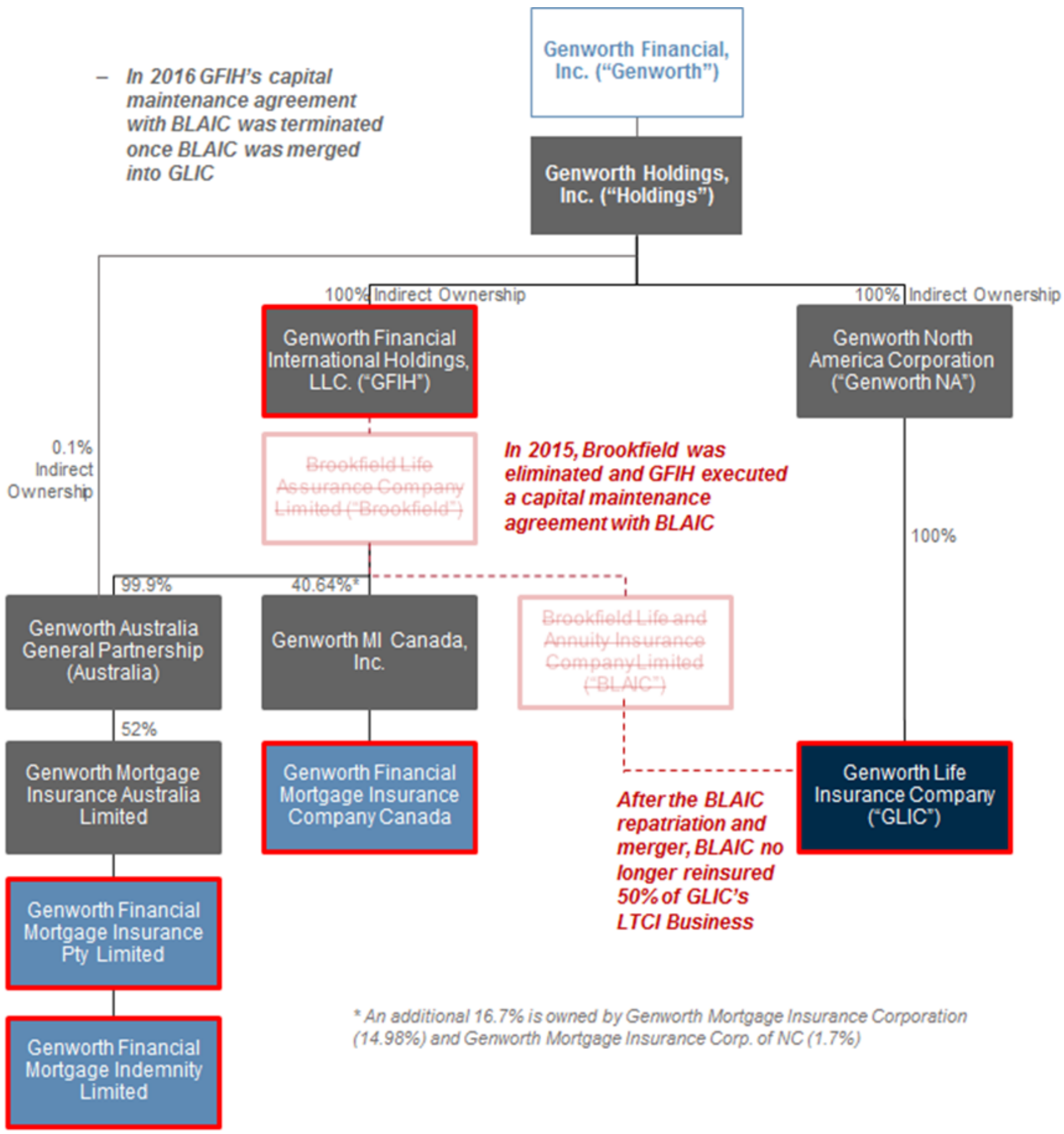

fig. 4

101. The practical effect of the termination of the reinsurance agreement, guaranty, and Capital Maintenance Agreements described above was that GLIC lost

valuable contractual guarantees from Genworth affiliates that, had they not been terminated, would have supported GLIC's ability to pay policyholder claims and agent commissions well into the future. In essence, through corporate restructuring and self-dealing, Genworth has stripped GLIC of critical contractual assets, fundamentally undermining GLIC's ability to pay claims. GLIC received Inadequate Consideration in exchange for the termination of these important and valuable assets.

102. The reason Genworth and its subsidiaries executed these transactions was simple: they wanted to protect valuable assets within the broader Genworth corporate enterprise from its deteriorating long-term care business. Specifically, the avowed purpose and immediate result of the Reinsurance Termination was to strip value from GLIC precisely for the reason that GLIC was in financial distress.

103. Genworth did not hide its true motives. It openly touted the Reinsurance Termination as a boon for Genworth stockholders. For example, in its 2014 Annual Report (Form 10-K), Genworth stated, "adverse developments in our … long-term care insurance business (including the recent increases in our reserves of that business) … could, in turn, adversely impact [Genworth's ability to realize dividends] in the future from our Canadian and Australian mortgage insurance businesses." The Annual Report continued: "We intend to seek regulatory approvals to effectively unwind the long-term care insurance reinsurance agreement between

GLIC and BLAIC and release the related Brookfield guarantee thereof." Genworth Financial, Inc., Annual Report (Form 10-K), at 49.

104. In its 2014 Form 10-K, Genworth admitted that the Reinsurance Termination would adversely affect GLIC and the members of the class. It said, "One of our strategic priorities is to … unwind the reinsurance agreement between BLAIC and GLIC and release the related Brookfield guarantee thereof, in 2015. **When we implement this** (following receipt of required regulatory approvals) … **we would anticipate an adverse impact on GLIC's risk-based capital ratio**, which would depend on the levels of capital in that company and that would transfer from BLAIC at the time." Genworth Financial, Inc., Annual Report (Form 10-K), at 111 (emphasis added).

105. In a Q3 2015 earnings call, Genworth again expressed its desire to relieve the mortgage insurance business from being effectively trapped as credit support for GLIC, telling investors: "One of the things we've talked about in the past is the desire to repatriate that business … We've evidenced that we've been able to bring capital up [to Genworth] through our Bermuda subsidiaries, as we obviously talked about what we got from Australia this year. … [I]t still is a goal of ours to do the long-term care repatriation either in 2016 or 2017."

106. Genworth reconfirmed this plan in 2016, stating in its filed form 10-K, "In February, 2016, we announced that one of our strategic objectives was to

separate, then isolate, through a series of transactions, our long-term care insurance business from our other U.S. life insurance businesses." (emphasis added).

107. In its 2015 form 10-K Genworth wrote, "As of December 31, 2015, GFIH directly or indirectly owns our 52.0% interest in our Australian mortgage insurance subsidiaries and 40.6% of our Canadian mortgage insurance subsidiary. As a result of GFIH's capital maintenance agreement, adverse developments in our reinsured long-term care insurance business (including the recent increases in our reserves of that business) have adversely impacted BLAIC's financial condition, which could, in turn, adversely impact GFIH's willingness or ability to pay dividends to [Genworth.] **We intend to seek regulatory approvals to effectively unwind the long-term care insurance reinsurance agreement between GLIC and BLAIC and release the related GFIH capital guarantee thereof**." Genworth Financial, Inc., Annual Report (Form 10-K), at 63 (emphasis added).

108. The substance and avowed purpose of these changes to the reinsurance, guaranty, and capital maintenance agreements is clear, and in fact, openly admitted by Genworth. The purpose was to eliminate the ability of GLIC creditors (i.e., the Class of policyholders and agents in this case) to draw upon assets of other Genworth subsidiaries to pay obligations of GLIC. The contracts, which would have otherwise continued to exist to support GLIC's obligations, were terminated for Inadequate

Consideration to GLIC. Genworth, Holdings, GFIH and GLIC carried out these corporate changes and releases at a time when GLIC was, or would be rendered, inadequately capitalized or insolvent, and with actual intent to hinder, delay and defraud GLIC's policyholders and agents.

C. The Proposed China Oceanwide Transaction

109. In a press release dated October 23, 2016, Genworth announced that it had entered into an Agreement and Plan of Merger ("Merger Agreement") to sell Genworth to an entity to be known as China Oceanwide Holdings Group Co., Ltd. ("China Oceanwide"), a subsidiary of a Chinese conglomerate doing business predominantly in the construction and real estate development industry. The sale was pursued in order to benefit Genworth's shareholders, including substantial management shareholders.

110. Just as with the termination of the Brookfield and related reinsurance arrangements, the China Oceanwide transaction was designed to harm GLIC's policyholders and other creditors by stripping assets from GLIC and making them available to Genworth, and by extension, its acquirer. In its 2016 Form 10-K, Genworth stated:

> In February 2016, we announced that one of our strategic objectives was to separate, then isolate, through a series of transactions, our long-term care insurance business from our other U.S. life insurance businesses. We intend to continue to pursue this plan in connection with the China Oceanwide transaction …. China Oceanwide has no future obligation and has expressed no intention to contribute additional

> capital to support our legacy long-term care insurance business. Separating and isolating our long-term care insurance business has been an important strategic objective, because we believe it would:
>
> > • **help to isolate the downside risk from our long-term care insurance business that is putting downward pressure on the ratings of Genworth Holdings and our other subsidiaries,**
> >
> > **• allow any future dividends from GLAIC to be paid directly to the holding company, which increases Genworth Holdings' liquidity and ability to repay and/or refinance its indebtedness, and**
> >
> > • give a clearer picture of the necessity for the long-term care insurance rate actions that we are working towards today.

Genworth Financial, Inc., 2016 Annual Report (Form 10-K), at 6 (emphasis added).

111. Under the original form of the proposed Merger Agreement, China Oceanwide would have acquired all outstanding shares of Genworth's Class A common stock for $5.43 in cash per share, for a total purchase price of approximately $2.7 billion. China Oceanwide would have also contributed (i) $600 million of cash to be used to retire Holdings' outstanding 2018 debt obligations, and (ii) $525 million in cash to facilitate the GLAIC Unstacking (as defined in the following paragraph of this Complaint).

112. To induce China Oceanwide to consummate the transaction, and thereby benefit Genworth's shareholders, as part of the proposed Merger Agreement, Genworth actively sought to persuade the Department to permit Genworth to cause GLIC's equity interests in GLAIC, a valuable GLIC subsidiary, to be transferred to

an affiliate—out of the reach of GLIC's policyholders—for a one-time payment of $525 million (the "GLAIC Unstacking").

113. In April 2018, the Department denied approval for the GLAIC Unstacking after Genworth, China Oceanwide and the Department were unable to agree on a mutually acceptable fair market value. Had the proposed GLAIC Unstacking been approved and consummated, it would have stripped another approximately $1 billion of value from GLIC, as GLIC's equity interest in GLAIC is, upon information and belief, worth between $1.2 and $1.9 billion.

114. The unsuccessful proposed GLAIC Unstacking, and other steps taken prior to the time the Department denied approval, reflected the ongoing actual intent of Genworth, Holdings, GFIH and GLIC to make assets of GLIC unavailable to pay GLIC's obligations to its long-term care policyholders and agents. In May, 2018, Mr. McInerney stated that the "primary reasons for pursuing the [GLAIC Unstacking] were to create an additional dividend stream to the parent, **to further isolate the LTC business from our other businesses** and to protect the ratings of our U.S. mortgage insurance business." Genworth Earnings Call First Quarter 2018, Statement of Thomas McInerney (May 2, 2018) (emphasis added).

115. The active efforts of Genworth, Holdings, GFIH and GLIC to gain approval of the proposed GLAIC Unstacking reflected an actual intent on the part of each such entity to hinder, delay, and defraud GLIC's policyholders. Each of those

defendants carried out the GLIC Dividends and the Reinsurance Termination with the same actual intent.

116. Genworth and China Oceanwide continue to pursue the proposed Merger Agreement—without the GLAIC Unstacking feature—and recently confirmed that neither Genworth nor China Oceanwide has any intention to provide additional capital to support Genworth's legacy long-term care business.

IV. Defendants' Conduct Toward GLIC Policyholders and Agents

117. Genworth's management's perceptions concerning GLIC's financial condition have not been disclosed to its policyholders. Rather than tell policyholders that Genworth has engaged in transactions to benefit Genworth to the detriment of GLIC policyholders, Genworth continues to tell current and potential long-term care policyholders that it is acting in their interests. As recently as July 2018, Genworth has stated to its insureds in marketing brochures and in the long-term care section of its website: **"[b]eing there for you at the moment of truth is our top priority"** (emphasis added). In a section of its current website entitled "our promise," it represents to its policyholders that "**For over 145 years, we have been focused on helping our customers navigate caregiving options, protect and grow their retirement income, and prepare for the financial challenges that come as we age. We're here to be a trusted ally for everybody who needs care as they age and anybody who loves them.**"

118. As demonstrated herein, those statements are cynically false and misleading. For the past several years, defendants' top priority has been to be *absent* when the "moment of truth" arrives for each of its policyholders.

119. The same is true with respect to agents. GLIC promised to pay agents based on the premiums policyholders pay for the policies that the agents sold. Renewal commissions are a form of deferred compensation for such sales, and such commissions are a significant component of agent compensation. Commission receivables function as a form of retirement planning for many agents, much like a pension. The Fraudulent Transfers jeopardized the agents' renewal commissions, which would cease if GLIC were liquidated.

COUNT I

(Intentional Fraudulent Transfer—Payment of GLIC Dividends: Against Genworth, Holdings, Genworth NA and GLIC)

120. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

121. At all relevant times, as holders of long-term care policies issued by GLIC and as agents owed commissions on the premiums paid and to be paid for such policies, Plaintiffs and Class members have each had an actual or contingent right to payment from GLIC, and therefore each is, and at all relevant times has been, a "creditor" of GLIC within the meaning of applicable law.

122. Genworth caused the GLIC Dividends to be transferred, conveyed or assigned from GLIC to Genworth NA, and its parent entities Holdings and Genworth.

123. Genworth, Holdings, Genworth NA and GLIC caused the GLIC Dividends to be transferred, conveyed or assigned with actual intent to hinder, delay or defraud Plaintiffs and Class members.

124. Genworth retains effective control of each of the other entity defendants through ownership, whether direct or indirect, of the entity, and is therefore an insider pursuant to applicable state law. Thus, the GLIC Dividends constituted transfers, conveyances or assignments made to an insider.

125. At the time the GLIC Dividends were transferred, conveyed or assigned, Genworth, Holdings, Genworth NA and GLIC knew that GLIC was, or would be rendered, inadequately capitalized or insolvent.

126. Each of the GLIC Dividends is voidable, and Plaintiffs and the Class are entitled to an appropriate order that Genworth, Holdings and Genworth NA return the dividends, with interest, to GLIC.

COUNT II

(Constructive Fraudulent Transfer—Payment of GLIC Dividends: Against Genworth, Holdings, Genworth NA and GLIC)

127. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

128. Each of the GLIC Dividends represented a transfer, conveyance and assignment under operative law.

129. As of the date of, and giving effect to the GLIC Dividends, GLIC had insufficient property to pay all of the debts to GLIC policyholders, agents and other GLIC creditors that GLIC had contracted and that would fall due in future.

130. Each of the GLIC Dividends occurred while GLIC was, or would be rendered, inadequately capitalized or insolvent, or at a time when Genworth, Holdings, Genworth NA and GLIC intended to incur, or believed or reasonably should have believed that GLIC would incur, debts beyond GLIC's ability to pay as they became due, rendering GLIC insolvent.

131. Each of the GLIC Dividends was made for Inadequate Consideration to GLIC.

132. Each of the GLIC Dividends is voidable under applicable law, and Plaintiffs and the Class are entitled to an appropriate order that Genworth, Holdings, and Genworth NA return the dividends, with interest, to GLIC.

COUNT III

(Intentional Fraudulent Transfer—Reinsurance Termination: Against Genworth, Holdings, GFIH and GLIC)

133. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

134. The Reinsurance Termination was a transfer, conveyance, assignment and/or the release of an "obligation" by Genworth and GFIH within the meaning of applicable law.

135. The Reinsurance Termination was engineered, caused, and directed by Genworth, which exercises complete control over the other defendants. The Reinsurance Termination was also caused by Holdings and GFIH.

136. The Reinsurance Termination was made to and for the benefit of an "insider" of GLIC within the meaning of applicable law because Genworth exercises total control of Holdings, GFIH and GLIC through indirect ownership of their equity and control of the boards of members or directors of each.

137. Genworth, Holdings, GFIH and GLIC entered into the Reinsurance Termination with the actual intent to hinder, delay or defraud creditors of GLIC, including Plaintiffs and the other Class members.

138. The Reinsurance Termination is voidable under applicable law, and Plaintiffs and the Class are entitled to an appropriate order that Genworth, Holdings, and GFIH unwind the Reinsurance Termination.

COUNT IV

(Constructive Fraudulent Transfer—Reinsurance Termination: Against Genworth, Holdings, GFIH and GLIC)

139. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

140. The Reinsurance Termination represented a transfer, conveyance and assignment under operative law.

141. As of the date of, and giving effect to the Reinsurance Termination, GLIC had insufficient property to pay all of its debts owed and to become owed to GLIC policyholders, GLIC's agents and other GLIC creditors with whom GLIC had contracted and that would fall due in future.

142. The Reinsurance Termination occurred while GLIC was, or would be rendered, inadequately capitalized or insolvent, or at a time when Genworth, Holdings, GFIH and GLIC intended to incur, or believed or reasonably should have believed that GLIC would incur, debts beyond GLIC's ability to pay as they became due, rendering GLIC insolvent.

143. The Reinsurance Termination was made for Inadequate Consideration to GLIC.

144. The Reinsurance Termination is voidable under applicable law, and Plaintiffs and the Class are entitled to an appropriate order that Genworth, Holdings, and GFIH unwind the Reinsurance Termination.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment against defendants and in favor of Plaintiffs and award the following relief:

A. Determine that the claims alleged may be maintained as a class action, appoint Plaintiffs as representatives of the Class, appoint the undersigned counsel as Class Counsel, and issue an order certifying the Class defined above;

B. Enter an appropriate order requiring the defendants to unwind the Reinsurance Termination and restore to GLIC from Genworth, Holdings, and GFIH all of the value fraudulently transferred from GLIC in the Reinsurance Termination;

C. Enter an appropriate order unwinding the GLIC Dividends and restoring to GLIC all of the value fraudulently transferred to Genworth NA, Holdings and Genworth by means of the GLIC Dividends;

D. Award to Plaintiffs their attorneys' fees, costs and other expenses; and

E. Grant such other and further relief as the Court deems just and appropriate.

ANDREWS & SPRINGER LLC

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